

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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DEMOCRATIC NATIONAL COMMITTEE,

Plaintiff,

Civil Action No. 1:18-cv-03501 (JGK)

v.

THE RUSSIAN FEDERATION *et al.*,

Defendants.

----- X

MOTION TO SERVE DEFENDANT JARED C. KUSHNER BY FIRST CLASS MAIL

Plaintiff DNC (“Plaintiff”) respectfully requests leave to serve the Complaint on Defendant Jared C. Kushner (“Kushner”) by sending the Complaint to his home in the District of Columbia via first class mail.

I. Procedural History

Plaintiff filed this case on April 20, 2018 and has since been working diligently to serve the Defendants. On May 2, 2018, Plaintiff mailed service waivers to the Defendants with addresses in the United States, including Kushner, but Kushner did not return the waiver by the June 2, 2018 deadline. Plaintiff therefore retained Capitol Process Services, Inc. (“CPS”) to serve Kushner. Between June 11, 2018 and June 25, 2018, CPS tried three times to serve an individual of suitable age and discretion in Kushner’s Manhattan apartment, but the attempts were unsuccessful. (Ex. A). As a result, Plaintiff attempted to serve Kushner at his house in Washington, D.C. (Ex. B).

On June 26, 2018, a CPS process server, Vance Warren, attempted to serve the summons, Complaint, Electronic Case Filing Rules & Instructions, and Individual Practices of Judge John

G. Koeltl at Kushner's D.C. address. (Ex. B). Kushner is a Senior Advisor to the President and is accordingly afforded protection by the United States Secret Service. When Mr. Warren arrived at the residence, he spoke with a United States Secret Service agent and explained that he was attempting to serve process in a matter before the United States District Court for the Southern District of New York. (Ex. B). After checking with his superior, the Secret Service agent told Mr. Warren that Mr. Kushner would not be made available and Mr. Warren should "figure out another way to attempt service." (Ex. B).

Plaintiff therefore attempted to serve Kushner by certified mail two days later, on June 28, 2018. (Ex. C); *see* D.C. Super. Ct. R. Civ. P. 4(c)(4) (permitting service by certified mail in D.C.). On July 9, 2018, the United States Postal Service informed Plaintiff's counsel that it had tried and failed to deliver the package to Kushner's home. (Ex. C).

On July 16, 2018, CPS tried to serve the doorman, security guard, or mail clerk at Kushner's New York residence, or alternatively to affix a copy of the service packet¹ to Kushner's door. (Ex. D); *see Zeballos v. Tan*, No. 06 CIV. 1268 (GEL), 2006 WL 1975995, at *3 (S.D.N.Y. July 10, 2006) (holding that N.Y. C.P.L.R. § 308(2) permits service on the mailroom staff in a building where a defendant occasionally stays, so long as the summons and complaint are also mailed to the defendant's last known residence or place of business); N.Y. C.P.L.R. § 308(4) (permitting nail and mail service when other means of service are unavailable). But the staff at Kushner's building did not accept service. *See* Ex. D. The staff similarly refused the process server's request to affix a copy of the service packet to Kushner's door, explaining that Kushner no longer lives there. (Ex. D).

¹ The "service packet" included the summons, Complaint, Electronic Case Filing Rules & Instructions, and Individual Practices of Judge John G. Koeltl as required by the Court.

II. Analysis

Federal Rule of Civil Procedure 4(e) outlines four acceptable procedures for serving a summons and complaint: (1) “delivering a copy of the summons and of the complaint to [a defendant] personally”; (2) “leaving a copy of each at the [defendant’s] dwelling or usual place of abode with someone of suitable age and discretion who resides there”; (3) “delivering a copy of each to an agent authorized by appointment or by law to receive service of process”; and (4) “following state law for serving a summons in an action brought in courts of general jurisdiction in the state where the district court is located or where service is made.” The first three procedures are currently unavailable to serve Kushner. The Secret Service informed CPS that Kushner could not be served personally. At the same time, CPS has repeatedly tried and failed to serve the Complaint at Kushner’s Manhattan apartment and D.C. home. Finally, Plaintiff does not know of any agent authorized to accept service on Kushner’s behalf.

Thus, Plaintiff must serve Kushner by following the laws of New York—where the “district court is located”—or the District of Columbia—where service can be “made” on Kushner or his home. Fed. R. Civ. P. 4(e)(1). As will be explained further below, the best available means for serving Kushner under the laws of New York is sending a copy of the summons, Complaint, Electronic Case Filing Rules & Instructions, and Individual Practices of Judge John G. Koeltl to his D.C. home via first class mail. Plaintiff therefore requests permission to serve Kushner in that manner.

New York law provides five procedures for serving a summons on a defendant: (1) giving the summons and complaint to the defendant within the state of New York; (2) giving the summons “to a person of suitable age and discretion” at the defendant’s “actual place of business, dwelling place[,] or usual place of abode” within the state of New York and then

mailing those materials to the defendant “at his or her last known residence . . . [or] place of business”; (3) delivering the summons and complaint to the defendant’s agent within the state of New York; (4) affixing the summons and complaint to the door of the defendant’s dwelling place or business within New York and mailing the materials to the defendant’s last known residence or place of business (if the first three methods of service are unavailable); and (5) “in such manner as the court, upon motion without notice, directs, if service is impracticable” by the first, second, and fourth means. N.Y. C.P.L.R. § 308.

In this case, it would be “impracticable” to serve Kushner using any of first four procedures identified in N.Y. C.P.L.R. § 308 because those procedures can only be used if the defendant is physically present “within the state” of New York or has a dwelling, business, or agent “within the state of New York.” N.Y. C.P.L.R. § 308. However, after four failed attempts to serve Kushner or his mailperson at his Manhattan apartment, Plaintiff was finally informed that Kushner no longer lives there. In addition, Kushner now works at the White House (which is not in New York), and Plaintiff does not know of any registered agent authorized to accept service on his behalf. Plaintiff therefore moves for an order allowing service on Kushner “in such a manner as the court . . . directs.” N.Y. C.P.L.R. § 308(5).

In fashioning an alternative means of service, the Court may choose any method that is “reasonably calculated, under all circumstances, to apprise interested parties of the pendency of the action and afford them an opportunity to present their objections.” *Philip Morris USA Inc. v. Veles Ltd.*, No. 06 Civ. 2988 (GBD), 2007 WL 725412, at *2 (S.D.N.Y. Mar. 12, 2007) (quoting *Mullane v. Central Hanover Bank & Trust Co.*, 339 U.S. 306, 314 (1950)); *see also Dobkin v. Chapman*, 21 N.Y.2d 490, 499 (1968) (noting that courts have “broad” discretion to design an alternative means of serving a defendant). Here, the means of service most likely to reach

Kushner is sending the service packet by first class mail to Kushner's D.C. home. In light of CPS's conversations with secret service officers stationed at that house, Plaintiff's counsel is confident that Kushner and his family live there; as a result, mail sent to that address is reasonably calculated to reach him. *Cf. Ferrarese v. Shaw*, 164 F. Supp. 3d 361, 366 (E.D.N.Y. 2016) ("Courts have found that service by certified mail to a defendant's last known address is a valid method of alternate service."); *F.T.C. v. PCCare247 Inc.*, No. 12 CIV. 7189 (PAE), 2013 WL 841037, at *4 (S.D.N.Y. Mar. 7, 2013) ("Service by email alone comports with due process where a plaintiff demonstrates that the email is likely to reach the defendant."). Nevertheless, nobody at Kushner's home signed for the Complaint when it was sent by certified mail. By contrast, first-class mail does not require a signature, and will therefore remain at Kushner's home—and not returned to sender—if no one signs a delivery receipt. As a result, the best remaining option is to serve him by regular, first class mail.

III. Conclusion

For the foregoing reasons, Plaintiff respectfully requests permission to serve Kushner at his D.C. home via first class mail.

Dated: July 17, 2018

Respectfully submitted,

Michael Eisenkraft (#6974)
Cohen Milstein Sellers & Toll PLLC
88 Pine St. • 14th Floor
New York, NY 10005
(212) 838-7797

/s/ Joseph M. Sellers

Joseph M. Sellers (admitted *Pro Hac Vice*)
Geoffrey A. Graber (admitted *Pro Hac Vice*)
Julia A. Horwitz (admitted *Pro Hac Vice*)
Alison S. Deich (*Pro Hac Vice* pending)
Cohen Milstein Sellers & Toll PLLC
1100 New York Ave. NW • Fifth Floor
Washington, DC 20005
(202) 408-4600

Attorneys for Plaintiff

CERTIFICATE OF SERVICE

I hereby certify that on July 17, 2018, I electronically filed the Motion to Serve Defendant Jared C. Kushner by First Class Mail with the Clerk of the Court using ECF, which in turn sent notice to all counsel of record.

Dated: July 17, 2018

/s/ Julia A. Horwitz
Julia A. Horwitz

EXHIBIT A

UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF NEW YORK

Democratic National Committee

Plaintiff

vs.

Case No.: 1:18-cv-03501-JGK

The Russian Federation, et al.

Defendant

AFFIDAVIT OF DUE DILIGENCE

DISTRICT OF COLUMBIA, SS.:

Joshua Lee, being duly sworn deposes and says:

Deponent is not a party herein, is over 18 years of age and does business in Washington DC.

Deponent attempted to serve the within Summons, Complaint, Electronic Case Filing Rules & Instructions, Individual Practices of Judge John G. Koeltl on **Jared C. Kushner**, therein named, and that after due search, careful inquiry and diligent attempts at deponent was unable to effect process upon the person being served because of the following reason(s):

- | | |
|---|---|
| <input type="checkbox"/> Unknown at address | <input type="checkbox"/> House/building vacant |
| <input type="checkbox"/> Moved, left no forwarding | <input type="checkbox"/> Address does not exist |
| <input type="checkbox"/> Evading | <input type="checkbox"/> Service canceled |
| <input type="checkbox"/> Service refused | <input type="checkbox"/> Received no answer at the door |
| <input checked="" type="checkbox"/> Other: On each occasion, I was told by security that Jared Kushner was not there and is rarely at this address. | |

ATTEMPTS WERE MADE AS FOLLOWS:

Date	Time	Place
06/11/18	2:18 PM	502 Park Avenue, Apartment 28, New York, New York 10022
06/18/18	7:25 PM	502 Park Avenue, Apartment 28, New York, New York 10022
06/25/18	7:11 AM	502 Park Avenue, Apartment 28, New York, New York 10022

Sworn to before me on

6/26/2018

EVAN COHAN

NOTARY PUBLIC & ATTORNEY AT LAW

NO. 02CO4998577

QUALIFIED IN ROCKLAND COUNTY

CERTIFICATE FILED IN NEW YORK COUNTY

COMMISSION EXPIRES JUNE 29, 2022



Joshua Lee

Job # 1546289

Ref # N/A

EXHIBIT B

Democratic National Committee

Plaintiff

vs.

Case No.: 1:18-cv-03501-JGK

The Russian Federation, et al.

Defendant

AFFIDAVIT OF DUE DILIGENCE

I, David S. Felter, a Private Process Server, having been duly authorized to make service of the Summons, Complaint, Electronic Case Filing Rules & Instructions, Individual Practices of Judge John G. Koeltl in the above entitled case, hereby depose and say:

That I am over the age of eighteen years and not a party to or otherwise interested in this matter.

That I am the Custodian of Records of Capitol Process Services, Inc.

That after due search, careful inquiry and diligent attempt(s), we have been unable to serve Jared C. Kushner with the above named documents.

That on June 26, 2018 from 2:00 PM to 2:21 PM, my agent, Vance Warren, attempted to serve Jared C. Kushner at 2449 Tracy Place, NW, Washington, DC 20008. On this occasion, Mr. Warren spoke with a United States Secret Service agent posted at the front door and explained to the agent that he was attempting to serve process upon Jared Kushner on behalf of a matter before the United States District Court for the Southern District of New York. As Mr. Warren waited, the agent asked his superior for guidance on how to handle this situation. Mr. Warren was told by the agent that Mr. Kushner would not be made available and that Mr. Warren would need to "figure out another way to attempt service."

I declare under penalty of perjury that this information is true.

Sworn to before me on

07/12/18

Angela H. Croson

Angela H. Croson

Notary Public, District of Columbia

My Commission Expires: March 31, 2019



David S. Felter

David S. Felter

Client Ref Number: N/A

Job #: 1546975

EXHIBIT C

[FAQs > \(http://faq.usps.com/?articleId=220900\)](http://faq.usps.com/?articleId=220900)

Track Another Package +

Tracking Number: 70083230000265673095[Remove X](#)

We attempted to deliver your item at 4:02 pm on July 9, 2018 in WASHINGTON, DC 20008 and a notice was left because no secure delivery location was available. You may arrange redelivery by using the Schedule a Redelivery feature on this page or may pick up the item at the Post Office indicated on the notice beginning July 10, 2018. If this item is unclaimed by July 24, 2018 then it will be returned to sender.

Delivery Attempt: Action Needed

July 9, 2018 at 4:02 pm
Notice Left (No Secure Location Available)
WASHINGTON, DC 20008

[Schedule Redelivery](#) ✓

Text & Email Updates

Schedule Redelivery

Tracking History**July 9, 2018, 4:02 pm**

Notice Left (No Secure Location Available)
WASHINGTON, DC 20008

We attempted to deliver your item at 4:02 pm on July 9, 2018 in WASHINGTON, DC 20008 and a notice was left because no secure delivery location was available. You may arrange redelivery by using the Schedule a Redelivery feature on this page or may pick up the item at the Post Office indicated on the notice beginning July 10, 2018. If this item is unclaimed by July 24, 2018 then it will be returned to sender.

July 9, 2018, 4:15 am

Departed USPS Regional Facility
WASHINGTON DC DISTRIBUTION CENTER

July 8, 2018

In Transit to Next Facility

July 7, 2018, 2:36 pm

Arrived at USPS Regional Facility
WASHINGTON DC DISTRIBUTION CENTER

July 7, 2018

In Transit to Next Facility

July 6, 2018, 10:56 pm

Arrived at USPS Regional Facility
GAITHERSBURG MD DISTRIBUTION CENTER

July 2, 2018, 10:55 am

Out for Delivery
WASHINGTON, DC 20008

July 2, 2018, 10:45 am

Sorting Complete
WASHINGTON, DC 20008

July 2, 2018, 9:43 am

Arrived at Unit
WASHINGTON, DC 20008

July 1, 2018, 4:53 pm

Departed USPS Regional Facility
WASHINGTON DC DISTRIBUTION CENTER

July 1, 2018

In Transit to Next Facility

June 29, 2018, 3:16 pm

Arrived at USPS Regional Facility

WASHINGTON DC DISTRIBUTION CENTER

June 29, 2018

In Transit to Next Facility

June 28, 2018, 10:30 pm

Arrived at USPS Regional Facility

GAITHERSBURG MD DISTRIBUTION CENTER

Product Information



See Less ^

Can't find what you're looking for?

Go to our FAQs section to find answers to your tracking questions.

FAQs (<http://faq.usps.com/?articleId=220900>)

The easiest tracking number is the one you don't have to know.

With Informed Delivery[®], you never have to type in another tracking number. Sign up to:

- See images* of incoming mail.
- Automatically track the packages you're expecting.
- Set up email and text alerts so you don't need to enter tracking numbers.
- Enter USPS Delivery Instructions[™] for your mail carrier.

Sign Up

([https://reg.usps.com/entreg/RegistrationAction_input?](https://reg.usps.com/entreg/RegistrationAction_input?app=UspsTools&appURL=https%3A%2F%2Ftools.usps.com%2Fgo)

***NOTE: Black and white (grayscale) images show the outside, front of letter-sized envelopes and mailpieces that are processed through USPS automated equipment.**

EXHIBIT D

UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF NEW YORK

Democratic National Committee

Plaintiff

vs.

Case No.: 1:18-cv-03501-JGK

The Russian Federation, et al.

Defendant

AFFIDAVIT OF DUE DILIGENCE

DISTRICT OF COLUMBIA, SS.:

Joshua Lee, being duly sworn deposes and says:

Deponent is not a party herein, is over 18 years of age and does business in Washington DC.

Deponent attempted to serve the within Summons, Complaint, Electronic Case Filing Rules & Instructions, Individual Practices of Judge John G. Koeltl on **Paul J. Manafort, Jr.**, therein named, and that after due search, careful inquiry and diligent attempts at deponent was unable to effect process upon the person being served because of the following reason(s):

- | | |
|---|--|
| <input type="checkbox"/> Unknown at address | <input type="checkbox"/> House/building vacant |
| <input checked="" type="checkbox"/> Moved, left no forwarding | <input type="checkbox"/> Address does not exist |
| <input type="checkbox"/> Evading | <input type="checkbox"/> Service canceled |
| <input type="checkbox"/> Service refused | <input type="checkbox"/> No answer at door / buzzer / call box |
| <input checked="" type="checkbox"/> Other: On this occasion, I spoke with a security guard who stated that Paul W. Manafort, Jr. has not lived at 721 5th Avenue, Apartment 43G, New York, New York 10022 in over a year. | |

ATTEMPTS WERE MADE AS FOLLOWS:

Date	Time	Place
07/03/18	1:29 PM	721 5th Avenue, Apartment 43G, New York, New York 10022

Sworn to before me on

July 4, 2018

EVAN COHAN

NOTARY PUBLIC & ATTORNEY AT LAW
NO. 02CO4998577QUALIFIED IN ROCKLAND COUNTY
CERTIFICATE FILED IN NEW YORK COUNTY
COMMISSION EXPIRES JUNE 29, 2022

Joshua Lee

Job # 1547453

Ref # N/A